

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

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In Re:) Case No. 19-30088
) Chapter 11
PG&E CORPORATION AND PACIFIC)
GAS AND ELECTRIC COMPANY) San Francisco, California
) Thursday, February 27, 2020
Debtors.) 10:00 AM
)
COURT'S INTENTIONS RE:
PROPOSED ORDER RE: MOTION TO
APPLY RULE 7023, AND ORDER
SETTING DEADLINE [5042]

TRANSCRIPT OF PROCEEDINGS
BEFORE HONORABLE DENNIS MONTALI
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES (TELEPHONIC):

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5 Proceedings recorded by electronic sound recording;
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PG&E Corp. and Pacific Gas and Electric Co.

SAN FRANCISCO, CALIFORNIA, FEBRUARY 27, 2020, 10:03 AM

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(Call to order of the Court.)

THE CLERK: Court is now in session, the Honorable
Dennis Montali presiding.

THE COURT: Okay --

THE CLERK: Matter of PG&E Corporation.

THE COURT: Good morning. Counsel, I don't have a
phone list today, so let me go run down -- is Mr. Karotkin --
are you online?

MR. KAROTKIN: Yes, sir.

THE COURT: And Mr. Etkin?

MR. ETKIN: Yes, Your Honor.

THE COURT: And for the TCC, is that Mr. Richardson?

MR. RICHARDSON: Yes, Your Honor.

THE COURT: Okay. I was a little busy, as you know,
yesterday, and so were you, but I --

MS. ZEISS: Your Honor, I'm --

THE COURT: Oh. Who's that?

MS. ZEISS: One more person, Nicole, N-I-C-O-L-E,
Zeiss, Z as in "zebra", E-I, S as in "Sam", S as in "Sam", with
Mr. Etkin, but I'm at Labaton Sucharow --

THE COURT: Okay.

MS. ZEISS: -- for PERA.

THE COURT: Good morning, Ms. Zeiss.

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1 What I was going to say is I just -- I didn't take the
2 time to work my way through the two competing versions of the
3 notices, because -- well, I was hopeful that they would get
4 resolved without me.

5 So, Mr. Karotkin, why don't you tell me what are
6 the -- in dispute. And I'll listen to brief commentary either
7 way and make a decision.

8 MR. KAROTKIN: Okay. We have, I think, and Mr. Etkin
9 can confirm, largely resolved everything in the notice and the
10 order and the proof-of-claim form, other than in two items, and
11 Mr. Etkin can correct me if I'm wrong; one is, we had
12 characterized the notice and the proof of claim as
13 (indiscernible) with respect to rescission-and-damage claims,
14 which we believe is appropriate because that is what the claims
15 are, and then believe it should say "securities claims" or
16 something to that effect, (indiscernible) can verify. I
17 believe the only other open issue is whether the claims have to
18 be actually received by April 15th at midnight Pacific time or
19 whether they could be postmarked before that time, and then --

20 THE COURT: My goodness. What a -- that's a deal
21 point. Talk about -- this is why I get the big bucks to make
22 these tough decisions, you know.

23 MR. KAROTKIN: Exactly. Exactly. And our view is
24 (indiscernible) they are rescission or damage claims. And in
25 fact, I think we characterized them as such that they

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1 (indiscernible) claims that (indiscernible). And in addition,
2 as to the postmark, we say that typically (indiscernible).
3 Others say they have to be received by a particular time and
4 (indiscernible) five weeks ago. (Indiscernible). So in order
5 to let the process work and know exactly what we're doing
6 and -- that's our view.

7 THE COURT: Mr. Karotkin, you have to put a --

8 MR. KAROTKIN: And I think other than that --

9 THE COURT: -- you have to --

10 MR. KAROTKIN: -- this is --

11 THE COURT: Mr. Karotkin --

12 MR. KAROTKIN: -- (indiscernible). Other than that, I
13 think, again --

14 THE COURT: Mr. Karotkin, you have to put a --

15 MR. KAROTKIN: Thank you.

16 THE COURT: -- you have to put a postage stamp on the
17 envelope. That's the rule out here.

18 MR. KAROTKIN: (Indiscernible) utility does it.

19 THE COURT: Well, hopefully it wasn't from PG&E.

20 Mr. Etkin --

21 MR. KAROTKIN: No, (indiscernible).

22 THE COURT: Mr. Etkin, let's focus on the terminology.
23 Before you speak, let me just take one check at something.

24 Yeah, I'm just looking at the statute, because I can
25 probably -- can't go wrong by quoting 510(b). But what's wrong

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1 with the rescission-and-damage claim? That's what it is.

2 MR. ETKIN: Well, Your Honor, what's wrong with that
3 is that, with respect to the target audience, that's going to
4 cause some confusion, we believe, because that's essentially
5 the remedy that they're looking for. But it's not what these
6 claims are. And similar to how other claims have been
7 characterized in the case -- for example, there's the standard
8 bar-date notice, there's the customer bar-date notice, there's
9 the prior-claim bar-date notice.

10 And I would point out, Your Honor, that in your
11 Court's intentions with the proposed order, Your Honor actually
12 characterized these as an extended securities-claims bar date,
13 as well as the securities-claims bar-date notice. And we
14 believe that's appropriate because that's going to advise folks
15 what essentially -- what do these claims stem from. And most
16 (indiscernible) that's the purchase of securities. And if
17 these claims are consistently referred to as damage --
18 rescission or damage claims we believe that is not going to
19 fulfill the intent of notifying these folks as to whether they
20 should or should not file a claim.

21 So really it's nomenclature, Your Honor; we understand
22 that. But the idea, I believe, behind the (indiscernible)
23 rescission is to give folks an opportunity to assess whether
24 they have a claim. And we believe this nomenclature is going
25 to help folks focus in on the type of claim that they might

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1 have and whether they're going to file one.

2 THE COURT: Okay, well --

3 MS. ZEISS: Your Honor, it's Nicole Zeiss. Can I --

4 THE COURT: Yes.

5 MS. ZEISS: -- clarify one thing?

6 THE COURT: Go ahead.

7 MS. ZEISS: The documents will still say "rescission
8 or damage claim". What we're talking about is just the short
9 form with a defined term. The defined term is the "securities
10 proof of claim".

11 THE COURT: Yeah, okay, but here --

12 MS. ZEISS: And on the website, when people go --

13 THE COURT: -- here's my problem, and this is why I'm
14 not going to -- I might find a different language. But the
15 bankruptcy world knows that the universe is divided into
16 claimants and interest holders. And some people in your world
17 who suffer damages from misrepresentations concerning
18 particularly purchase of equity have claims, and they have
19 claims out in the real world. But under 510(b), a person who
20 was defrauded in purchasing a security still has a claim, but
21 it's for security. And I think that's an important distinction
22 where you have damage for a debt instrument, perhaps; it's a
23 slightly different nuance, because of the subordination, what
24 do you -- where do you put the subordinated bondholder; you put
25 the bondholder below or equivalent to everybody else or above

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1 equity.

2 But my problem is -- and here's the point that I think
3 I'm more in favor of the debtors' side here -- is that you also
4 have people who don't -- who might be filing essentially proofs
5 of interest, because I don't expect unsophisticated and
6 untrained people to know the difference between an equity
7 position or a claim position, when they're just filing
8 something and maybe have no damage.

9 So I think that -- and I don't remember; my
10 recollection is, when I was working on the little insert that I
11 wanted on the notice -- I don't recall that I changed the
12 phrase "rescission or damage claim". I believe that came from
13 the debtor. And what I put in there was the language that gave
14 them some context by saying, if essentially -- 510(b), this is
15 where you're going to end up, and this is why you're getting
16 your notice.

17 So I think -- as I was listening to both sides here, I
18 was looking at the statute. And the statute itself says, "a
19 claim arising from the rescission of a purchase or sale of
20 security of the debtor". That, of course, can mean a debt
21 instrument or an ownership interest.

22 So I want to be faithful to that language. And to me,
23 your terminology of just calling it a securities claim is too
24 neutral. And I'm hopeful that a security holder who hasn't
25 suffered damage, who reads this notice carefully, will say,

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1 it's not for me. And someone who believes he or she has had
2 damage, this is the way of getting there.

3 Now, I'm willing to look and see if there's a slight
4 tweak to the phrase, but I think the statute -- since the
5 statute uses the word "rescission", I want to be consistent
6 with that.

7 MR. KAROTKIN: Your Honor --

8 MR. ETKIN: Your Honor, may --

9 MR. KAROTKIN: Your Honor --

10 THE COURT: Yeah -- well, let me --

11 MR. ETKIN: Your Honor, may I --

12 THE COURT: Let's take this --

13 MR. ETKIN: May I try to --

14 THE COURT: Wait. Counsel. Let --

15 MR. KAROTKIN: May I --

16 THE COURT: Yes --

17 MR. KAROTKIN: May I say something?

18 THE COURT: Mr. Karotkin?

19 MR. KAROTKIN: May I say something?

20 THE COURT: Yes. Mr. Karotkin, go first.

21 MR. KAROTKIN: Thank you, sir. Your Honor, I think
22 if -- first of all, I understand. I agree with you. And I
23 think if you look at the notice, the first page of the notice,
24 including the box -- there's a box on the first page; it could
25 not be clearer to address the point you raised. And I simply

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1 (ph.) don't understand Mr. Etkin's position. And I don't want
2 to be pejorative. It just seems like a way to try to generate
3 more claims. And that's not what we're here for.

4 THE COURT: Okay, I'm going to listen to Mr. Etkin
5 but, before I do, I want to ask you both a question. Remember,
6 I started this hearing by telling you I haven't -- I didn't
7 take the time to review the competing forms. So -- excuse me.
8 Pardon me. I'm coughing

9 So I don't -- at the moment, I don't know what you
10 agreed to on the box. Mr. Karotkin, did you agree to the black
11 box that appears right in the center of the first page, that
12 Mr. Etkin proposed?

13 MR. KAROTKIN: No.

14 THE COURT: No?

15 MR. KAROTKIN: Well, Your Honor, we have revised the
16 notice to incorporate most of the comments Mr. Etkin submitted.
17 So it's different from what we submitted --

18 THE COURT: Okay.

19 MR. KAROTKIN: -- yesterday --

20 THE COURT: What's the --

21 MR. KAROTKIN: -- morning.

22 THE COURT: Just, what's the --

23 MR. KAROTKIN: I think --

24 THE COURT: Just tell me the words underneath the --
25 where -- right below where the debtors' names and numbers are.

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1 What's the first thing in all caps? What does it say?

2 MR. KAROTKIN: Okay. Okay, so, to all those who
3 purchase or acquired PG&E publicly traded debt or equity
4 securities during the period April 29 through November 15. And
5 then in the box that says, "Important: Court-ordered notice.
6 You are receiving this notice because you may have purchased or
7 acquired security of PG&E Corporation, Pacific Gas and Electric
8 Company, or both, from April 29, 2015 through November 15,
9 2018, inclusive, and may be entitled to a recovery in the PG&E
10 Chapter 11 cases. You have been given additional time by the
11 bankruptcy court to file a claim in the PG&E Chapter 11 cases,
12 for rescission or damages based upon your purchase of
13 acquisition of such securities. If you wish to file such a
14 claim, please follow the following" --

15 THE COURT: Okay.

16 MR. KAROTKIN: -- "please follow the instructions
17 below."

18 THE COURT: Okay. I got you.

19 Mr. Etkin, I don't -- I think Mr. Karotkin's got the
20 better argument here, but I think the statute's got the better
21 language. So I'll let you say what you want, but I'm pretty
22 satisfied with where we are. Go ahead.

23 MR. ETKIN: Well, let me try to move you, Your
24 Honor --

25 THE COURT: Sure.

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1 MR. ETKIN: -- if you don't mind. A couple of things.
2 The language that Mr. Karotkin just quoted really makes the
3 point. The claim is for damages or rescission, but it's based
4 upon the purchase or sale of a security. And --

5 THE COURT: No, no. It's based upon --

6 MR. ETKIN: -- as I understand 510(b) --

7 THE COURT: Hold it. It's based on the purchase, not
8 the sale.

9 MR. ETKIN: Yeah, I'm sorry; it's based upon the
10 purchase. I was confused with -- confusing the language of
11 510(b), which says "purchase or sale".

12 THE COURT: Right.

13 MR. ETKIN: But it's based upon the purchase of a
14 security. So -- and the basis of somebody's claim and what
15 they would recognize is that it relates to their purchase or a
16 transaction in connection with a security of the debtor.

17 510(b), Your Honor, really -- it focuses really on the
18 treatment of these claims from the standpoint of whether
19 they're subordinated pursuant to that statute. It really
20 doesn't deal necessarily with the definition of the claim or
21 the type of claim that it is. It's there to indicate that
22 claims of this type are subordinated statutorily under the
23 Code.

24 So these claimants are not going to understand that a
25 510(b) -- or those nuances, although, by virtue of some of the

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1 language that Your Honor included -- this notice tries to
2 explain that to some extent.

3 The important point, Your Honor, is that -- something
4 you raised with respect to the confusion of an equity holder
5 filing a claim based upon their status as a holder, where they
6 really may not have a securities claim. And we've addressed
7 that when we were -- this was a point of contention in our
8 discussions with Mr. Karotkin. But we've landed on language,
9 in both the proof of claim itself and in the notice, which
10 says, and I'm going to quote that to you, "You also do not need
11 to file a proof of claim if you did not purchase or acquire
12 publicly traded debt or equity securities of the debtors from"
13 the dates that you've heard before, "and your claim is based
14 solely on your current and continuous ownership of such
15 securities."

16 So the notice and the claim form already provide, for
17 the benefit of those receiving this form, that if they didn't
18 purchase during the class period, that -- and their claim is
19 only based upon their status as a holder, a current holder,
20 that they don't need to file a claim.

21 So that's really taken care of in the notice, and it's
22 really taken care of in the claim form itself. And while we
23 don't disagree, and can't disagree, with the fact that the
24 remedy here are (sic) damages or rescission, not only as is
25 discussed in 510(b), but under the securities laws themselves.

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1 From a standpoint of nomenclature and identifying the
2 form and the purpose of the form, we think it's extremely
3 important that recipients of this form understand that it's a
4 securities claim that they're filing and not a claim for
5 damages or rescission without context. The fact that it's a
6 securities claim is what gives it context. The fact that it
7 relates to the purchase of a security is what gives it context.

8 So that's why we think, from the standpoint of giving
9 the recipients of this notice the opportunity to file a claim
10 if they have one --

11 THE COURT: Okay, I got it.

12 MR. ETKIN: -- that --

13 THE COURT: Mr. Etkin --

14 MR. ETKIN: -- that nomenclature is included.

15 THE COURT: Mr. Etkin, I understand your point. You
16 are the class-action expert. I guess I'm the bankruptcy
17 expert. And to me, the very explanation you gave proves the
18 point not to go with your explanation, because in my world, if
19 I bought -- if I paid fifty-five bucks for a share back in 2016
20 and now I looked in the paper and the shares are at eighteen
21 dollars, I go, "Uh, well something happened." It wasn't the
22 coronavirus. It wasn't the world-trade situation, the
23 election. It wasn't the fire.

24 But at the same time, if I don't realize or don't
25 think that I have a damage claim, then I'm not going to do

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1 anything. But when somebody gives me a notice from the
2 bankruptcy court that says there's a deadline to file
3 securities claims, without qualifying it as what it's for, it,
4 to me, is exactly contrary.

5 So I'm the one that insisted that there be a brief
6 statement that there's a -- that in my mind is context that
7 says, if you -- and maybe the original notice had some in
8 there; I won't -- not competing with credit here -- but it says
9 somebody contends that he'd suffered loss, and the Bankruptcy
10 Code says this is where your losses are going to be dealt with,
11 you have a rescission claim, frankly, I'm almost wondering why
12 Mr. Karotkin insisted on putting the phrase "or damage" in
13 there.

14 But indeed, when you look at 510(b), the word "damage"
15 shows up later. It talks about a claim arising from
16 rescission -- leave aside sale -- a rescission of a purchase of
17 security. And then you go for damages arising, et cetera.

18 So, listen, there's no perfect system. I find that to
19 use your language is less informative and descriptive of what
20 is being done. The fact of the matter is, if PG&E had chosen,
21 or if there was a reason for, the company to be having a -- how
22 can I say this. Let me rephrase that. If there was a theory
23 by which there was a damage claim that could have been asserted
24 apart from whatever would follow under 510, that's something
25 else again.

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1 And we're here in this awkward situation because your
2 class action triggered something. In retrospect, perhaps there
3 should have been more adequate notice. There wasn't. We don't
4 have to go back over all of that.

5 So I'm -- tell you what; I'm just going to leave it
6 that way and overrule your objection.

7 Now --

8 MR. KAROTKIN: Your Honor --

9 THE COURT: -- on the timing, I want to -- oh, yes,
10 sir, Mr. Karotkin.

11 MR. KAROTKIN: Yeah. (Indiscernible) to the
12 (indiscernible) and the postmark, which is just the only other
13 open issue --

14 THE COURT: Yeah, well, I just want -- I wanted to
15 take a look at my calendar. Look, I -- again, I want to say
16 what I did. I decided, given the uncertainty about the notice
17 procedure to the nominees, et cetera, et cetera, the normal --
18 I looked for what is normal, if there is a normal. And a claim
19 arising out of a rejection of executory contract, for example,
20 traditionally in our district -- it's not passionately (ph.) --
21 gives rise to a thirty-day time. And although in a perfect
22 world there would have been notice in time to give a claims bar
23 date of March 31st, I just on my own decided a couple more
24 weeks because maybe things won't move as quickly as I would
25 hope that they would do.

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1 So I on my own just picked April 15th. I could have
2 picked April 17th as for actual arrival, or I could have put
3 April 13th or postage -- and I didn't think of it one way or
4 the other. I just picked Tax Day, April 15th. If you're
5 paying your taxes, you might as well file a claim for your
6 rescission damage. And I didn't give it any thought.

7 So I'm inclined to do what works best for Prime Clerk,
8 but I also am not comfortable shorting the claimants again.
9 And that almost tells me maybe I should make the date a little
10 later but make it the way Prime Clerk wants it.

11 So with that background, Mr. Karotkin, go ahead and
12 make your pitch and -- or give me a suggestion. And then I'll
13 hear from Mr. Etkin.

14 MR. KAROTKIN: I think that -- I think that the April
15 15th date was fine. It was just an issue of postmark. And I
16 just don't think we can rely on postmark. If Mr. Etkin wants
17 to make it April 16th, (indiscernible) April 16th, then fine.
18 But I think we just need a procedure that's consistent with
19 what is always done. A postmark is not what's done, and it's
20 not reliable.

21 THE COURT: And what have we done -- what's been done
22 for the fire claimants? I don't remember. Was that an
23 actual --

24 MR. KAROTKIN: It's not postmark. It's actual
25 receipt.

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1 THE COURT: Okay.

2 MR. KAROTKIN: That is -- the October 31st bar date
3 for everyone was actual receipt, and it was 5 p.m. --

4 THE COURT: Well, that's why --

5 MR. KAROTKIN: -- and you extended it to midnight.

6 THE COURT: You know, I didn't -- as I say, I didn't
7 go back and look.

8 Mr. Etkin, I'm going to go with Mr. Karotkin's method.
9 I want to have consistency in the procedure. He offered you an
10 extra day. You want an extra day?

11 MR. ETKIN: Your Honor, I'm sure that -- I'm sure that
12 claimants, given that April 15th is Tax Day and they might not
13 be focusing on this in the week or two leading up to April
14 15th -- I'll take whatever extra time they can give. The
15 problem, Your Honor, is that, with respect to the original bar
16 date, folks have about four months. This is a -- this is a
17 compressed time. And frankly, as a practical matter, claimants
18 who are getting these claim forms through nominees or with the
19 effort of nominees may have only a couple weeks or less, by the
20 time they get the claim form, to file something

21 So under the circumstances here, and these are
22 somewhat unique circumstances, we just felt that the idea of
23 just getting it in the mail by April 15th should be sufficient
24 and that, to the extent that there's snail mail and claims that
25 are postmarked by the 15th, drift in in the week, or so, after

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1 the 15th, that that's really not going to pose any problems for
2 anyone, including Prime Clerk.

3 THE COURT: Well, but again, Mr. Etkin, I --

4 MR. KAROTKIN: And, Your Honor, (indiscernible) --

5 THE COURT: Well, you're about to make the case.

6 But, Mr. Etkin, I'm going to, again, make the pitch
7 from the bankruptcy-administration point of view. As you said,
8 we have a tight schedule. I don't know how many claims are
9 going to come in. You thought we could get tens of thousands
10 of them. I don't know if we're going to get 5 claims or 50,000
11 claims. I don't know if a claimant's (sic) going to be for 5
12 dollars or 50,000 dollars. And that's a problem that the
13 debtor and the debtor's advisors have to deal with for reasons
14 that we don't have to go into.

15 But to me, we have a whole -- I mean, the notion of a
16 trickle effect, even if there're a small number of claims, and
17 even if the individual claims are a relatively small dollar
18 amount, it still -- this thing just gets magnified enormously
19 when we have 80,000 fire claimants and we have God knows how
20 many non-fire claimants.

21 So I'll give you the extra day just because I'm going
22 to -- I'm not going to even go the next day. I'll stick with
23 Mr. Karotkin's procedure because it's consistent. We have,
24 consistently for fire victims and for commercial creditors and
25 now for putative-class rescission claimants, the same

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1 methodology. I appreciate and understand that it's tough and
2 tight. I can't fix that.

3 So, Mr. Karotkin, I guess you do a global edit on your
4 wordprocessor and put in "16" --

5 MR. KAROTKIN: Yeah.

6 THE COURT: -- instead of "15" and stick with your --

7 MR. KAROTKIN: We will.

8 THE COURT: -- language. And I guess --

9 MR. KAROTKIN: Okay.

10 THE COURT: -- if that's all, I'll thank you, Counsel,
11 for getting --

12 MR. KAROTKIN: Well, we will --

13 THE COURT: -- all the other issues resolved.

14 So when am I going to get an order from you?

15 MR. KAROTKIN: (Indiscernible).

16 THE COURT: Am I going to get an order later today?

17 MR. KAROTKIN: We can do -- yes.

18 THE COURT: And what -- because again, as I say --

19 MR. KAROTKIN: Yeah. Yeah.

20 THE COURT: -- I will sign that order and it'll be on
21 our docket within -- by close of business today, without fail.

22 MR. KAROTKIN: Okay.

23 THE COURT: Okay, thank you all --

24 MR. KAROTKIN: Thank you, sir.

25 THE COURT: -- for your time.

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1 MS. ZEISS: Thank you, Your Honor.

2 THE COURT: Thank you.

3 MR. ETKIN: Thank you, Your Honor.

4 THE COURT: Thank you. Thank you, Mr. Etkin, Ms.

5 Weiss (sic) -- Zeiss.

6 (Whereupon these proceedings were concluded at 10:29 AM)

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RULINGS:

PAGE LINE

PERA's objection is overruled and Mr.

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Karotkin's language will be used.

C E R T I F I C A T I O N

I, Clara Rubin, certify that the foregoing transcript is a true and accurate record of the proceedings.



/s/ CLARA RUBIN

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Phoenix, AZ 85020

Date: February 28, 2020

A	arising (4) 8:19;15:15,17;16:19	4:21;14:19	claims (24) 4:13,14,15,17,24; 5:1;6:6,6,15,17,18; 7:18,19;10:3;12:18,22; 15:3;16:22;18:24;19:8, 10,11,16,17	16:19
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